STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINNE THOMAS HIXON,

Defendant-Appellant.

UNPUBLISHED
December 23, 2003

No. 242768
Wayne Circuit Court
LC No. 01-011191

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of attempted possession of a firearm by a felon, MCL 750.92; MCL 750.224f, and possession of a firearm during the commission or attempted commission of a felony, MCL 750.227b(1). He was sentenced to two to thirty months' imprisonment on the attempt conviction, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals as of right. We reverse.

Defendant was stopped for disregarding a stop sign. In the back passenger seat, within defendant's reach, was a loaded 9 millimeter blue-steel automatic handgun. The car belonged to Timothy Hicks and defendant claimed that the gun did also. He also claimed that he had borrowed the car about one minute before he was stopped. The trial court found that the prosecution had not proved beyond a reasonable doubt that defendant was aware of the handgun's presence but nevertheless found that the prosecution had proven beyond a reasonable doubt that "defendant did attempt to transport a firearm when he was ineligible to do so."

On appeal, defendant argues that the prosecutor was required to prove that he specifically intended to "possess, use, transport, sell, purchase, carry, ship, receive or distribute a firearm". To be convicted of possession of a firearm by a felon, intent need not be shown. The prosecutor only needs to establish that the defendant possessed, used, transported, sold, purchased, carried, shipped, received or distributed a firearm. MCL 750.224f. However, in *People v Thousand,* 465 Mich 149, 164; 631 NW2d 694 (2001), the Supreme Court stated:

> Under our statute, then, an "attempt" consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense. We have further explained the elements of attempt under our statute as including "an intent to do an act or to bring about certain consequences which would in law amount to a crime,[15] and . . . an act in furtherance of that intent

which, as it is most commonly put, goes beyond mere preparation." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993), quoting 2 LaFave & Scott, Substantive Criminal Law, § 6.2, p 18.

[15] The characterization of "attempt" as a "specific intent" crime is fully consistent with the plain meaning of the word "attempt." See Perkins & Boyce, [Criminal Law (3d ed), p 637] ("the word 'attempt' means to try; it implies an effort to bring about a desired result. Hence an attempt to commit any crime requires a specific intent to commit that particular offense").

See also *People v Burton*, 252 Mich App 130, 149-150; 651 NW2d 143 (2002).

Since defendant was convicted of attempt, the specific intent to "possess, use, transport, sell, purchase, carry, ship, receive or distribute" the handgun did need to be shown. Since the trial court found that there was not proof beyond a reasonable doubt that defendant was aware of the handgun, it follows that there was not proof beyond a reasonable doubt of this intent. Therefore, defendant's conviction of attempt felon in possession must be reversed. Since this was the predicate offense for the felony-firearm conviction, it too must be reversed.

Given our disposition of this issue, we decline to address the remaining issues.

Reversed. Defendant's convictions and sentences are vacated.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff